IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Mana Ram & Ors. Vs. State of Rajasthan & Anr.

**S.B.CR.MISC. PETITION NO.772/2006**

DATE OF ORDER :: November 14, 2006

**PRESENT**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr.G.R.Punia, for the petitioners.
Mr.Ashok Upadhyaya, P.P.
None present for non-petitioner No.2 though served.

**BY THE COURT:**

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners seek quashing of FIR No.108/2006, Police Station, Phalodi for the offence under section 135 of the Indian Electricity Act (for short 'the Act' hereinafter) and section 430 I.P.C.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. No one appears for the complainant-non-petitioner No.2 though served.

It is contended by the learned counsel for the petitioners that for the offence punishable under section 135 of the Act, no court shall take cognizance except by a complaint in writing by an employee or a competent person or any of their authorities i.e. Chief Electrical Inspector or Electrical Inspector. In the instant case, the FIR has not been lodged by a competent person. Learned counsel for the petitioners has relied on decisions of this Court in Ram Narain vs. State of Rajasthan, **2006 (2) R.Cr.D. 480 (Raj.)** and Om Prakash vs. J.N.V.L., Jodhpur & Ors., **2006(6) R.D.D 3041.**

In Ram Narain vs. State of Rajasthan (supra), it was held that FIR has not been filed by District Collector, Sub-Divisional Officer and Tehsildar or any other authority of the Mining Department and, therefore, the FIR registered against the petitioner therein by S.H.O., Police Station, Hanumangarh Town was quashed.

In Om Prakash vs. J.N.V.L., Jodhpur & Ors. (supra), this Court held as under:

> "It has clearly been recorded that R1, R2 and C were tempered and re-punched. It is clear that the electricity meter in the premises of petitioner has been tempered with

> and no fault can be found by the respondents in making the observations."

This Court further held as under:

> "Apart from the aforesaid, the fundamental fact in the case remains that the petitioner had a sanctioned load of 35 HP as is evident from the report Annexure-1 and so also the last bill Annexure-2 of the Month of May, 2006. It appears that prior to it he had the sanctioined load of 30 HP as is evident from the other bills placed on record as Annexures 3 to 5. The petitioner has been found to have put load of 45.45 HP as is reported in the inspection report Annexure-1. It is apparent that the petitioner has not only tempered with the metering equipments but has also put excess load and the cumulative effect of all the circumstances is that the petitioner does not turn out to be a bona fide consumer."

On careful perusal of the FIR, it appears that apart from the offence under section 135 of the Act, the offence punishable under section 430 I.P.C. has also been alleged and according to the learned counsel for the petitioners, after investigation, the police has filed the challan against the present petitioners for the offence under section 135 of the Act as also under section 430 I.P.C. and the trial court took the cognizance on filing the challan.

Keeping in view the fact that apart from the offence under section 135 of the Act, the offence under section 430 I.P.C. has been alleged in the FIR and according to the learned counsel after investigation, the police filed the challan and the trial court took the cognizance, the whole of the FIR cannot be quashed only on the ground that the FIR was filed by an incompetent person so far section 135 of the Act is concerned, the petition is, therefore, dismissed. However, it will be open for the petitioners to agitate the point with regard to section 135 of the Act in a petition challenging the cognizance.

**[H.R.PANWAR],J.**

m.asif/-